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9
10 UNITED STATES BANKRUPTCY COURT
11 SOUTHERN DISTRICT OF NEW YORK
12

13 Ditech) Lead Cases No: 19-10412-jlg Ditech
	) Holding Corporation
14 <u>Debtor,</u>	) 19-10411-jlg Green Tree Credit LLC
	) Chapter 11
)
16 Michael Mc Christian	) VERIFIED COMPLAINT FOR:
17 Plaintiff and Creditor,	) 1. DECLARATORY RELIEF [28
	) U.S.C. §§ 2201, 2202]
18 vs.	) 2. QUASI CONTRACT
	) 3. NEGLIGENCE
20 DITECH HOLDING	) 4. VIOLATION OF 15 U.S.C.
21 CORPORATION MORTGAGE,	) §1692, ET SEQ.
22 LLC, GREEN TREE CREDIT LLC	) 5. VIOLATION OF CALIFORNIA
23 AND BRECKENRIDGE PROP	) BUSINESS AND
FUND 2016 LLC;	) PROFESSIONS CODE
	) SECTION 17200, ET SEQ.
24 Defendants	) 6. ACCOUNTING
	) 7. CANCELLATION OF
	) INSTRUMENTS
	) 8. QUIET TITLE
	) 9. SET ASIDE TRUSTEE'S SALE
28 _____)

ADVERSARY PROCEEDING COMPLAINT

1 **COMPLAINT**

2 COMES NOW, Plaintiff Michael McChristian (Hereinafter referred to
3 as “Plaintiff ”), an individual, by and through his attorney of record, Joseph La
4 Costa for a Adversary Proceeding against Debtors, DITECH HOLDING
5 CORPORATION , GREEN TREE CREDIT LLC, A Subsidiary of Ditech
6 (Hereinafter JOINTLY referred to as “DITECH”), and Breckenridge Prop
7 Fund 2016 LLC (‘BRECKENRIDGE’) as the purported Beneficiary acting on
8 behalf of Homecomings Financial, Inc. & GMAC, Inc. (hereinafter jointly as
9 “GMAC”) Lender as nominee for Plaintiff’s loan and executed the Security
10 Instrument entitled “Deed of Trust” (Hereinafter referred to as “Deed of
11 Trust”); and Breckenridge Prop Fund 2016 LLC (‘BRECKENRIDGE’)
12 purported buyer at a foreclosure sale in January 2019, actions in this claim
13 regarding the validity of that authority that has subsequently harmed Plaintiff
14 financially, pleads as follows:

15 **I. STATEMENT OF THE CASE**

- 16 1. Plaintiff alleges that Debtors have failed to exercise appropriate
17 oversight, management supervision and corporate governance, and have
18 failed to devote adequate financial, staffing, training, and legal resources
19 to ensure proper administration and delivery of services to Plaintiff and
20 Creditor; and have failed to establish and maintain adequate internal

21 **ADVERSARY PROCEEDING COMPLAINT**

1 controls, policies, and procedures, compliance risk management, and
2 internal audit and reporting requirements with respect to the
3 administration and delivery of services to Plaintiff and Creditor.
4

- 5 2. By reason of the conduct set forth above, DITECH and Debtors and/or
6 more than one other party engaged in unsafe or unsound practices that
7 expose them and Plaintiff to unacceptable operational, compliance,
8 legal, and reputational risks.
9
10 3. Through this action, Plaintiff seeks to stop Debtors fraudulent practices;
11 cancel any Assignment, which on information and belief is NOT validly
12 executed by the Debtor DITECH ; and determine the status of the
13 Debtors' claims.
14
15

16
17 **II. JURISDICTION, VENUE AND PARTIES**

- 18 4. This Court has original jurisdiction over the claims in this action based
19 on 28 U.S.C. §§ 1331, 1343, 2201, 2202, 12 U.S.C. § 2605, 15 U.S.C. §
20 1692, 42 U.S.C. § 1983 which confer original jurisdiction on federal
21 district courts in suits to address the deprivation of rights secured by
22 federal law.
23
24 5. This Court also has supplemental jurisdiction over the pendant state law
25 claims because they form a part of the same case or controversy under
26
27
28

1 Article III of the United States Constitution, pursuant to 28 U.S. C. §
2 1367.
3

4 6. This Court has original jurisdiction over the claims in this action based
5 on 28 U.S.C. §1332, which confers original jurisdiction on federal
6 district courts in suits between diverse citizens that involve an amount in
7 controversy in excess of \$75,000.00. This is also a Core Proceeding In
8 Ditech's Bankruptcy.
9
10

11 7. The unlawful conduct, illegal practices, and acts complained of and
12 alleged in this Complaint were all committed in the Southern District of
13 California and involved real property located in the Southern District of
14 California. However, venue properly lies in this District Since that is
15 where Ditech has Filed for Chapter 11 Relief.
16
17

18 8. McChristian is now, and at all times mentioned herein an individual
19 residing in the County of San Diego, State of California. At all relevant
20 times to this action, Plaintiff and Creditor have owned the real property
21 commonly known as 11118 Ironwood Drive, San Diego, CA further
22 described as: Assessor's Parcel Number **363-191-22-00**
23
24

25 9. DITECH, Green Tree and Ditech, LLC are each an "institution-affiliated
26 party" within the meaning of 12 U.S.C. § 1813(u) by virtue of DITECH
27 acting as agent for lender with respect to serving as mortgagee in a
28

ADVERSARY PROCEEDING COMPLAINT

1 nominee capacity for the lender, and are each an “entity-affiliated
2 party” within the meaning of 12 U.S.C. § 4502(11) by virtue of
3 DITECH acting as agent for GMAC and Homecomings Financial
4 Network (Hereinafter referred to as “Homecomings”); with respect to
5 serving as mortgagee in a nominee capacity for the owner of residential
6 mortgage loans.
7
8

9
10 10. DITECH is a wholly-owned subsidiary of DITECH, LLC. A Delaware
11 Corporation. GREEN TREE is also a subsidiary of Ditech, which is the
12 Lead Bankruptcy. and Breckenridge Prop Fund 2016 LLC is a
13 California LLC and purported buyer at invalid Foreclosure Sale.
14

15 11. McChristian is presently ignorant of the true identity and capacity, but
16 will amend this Complaint when their DOE identities have been
17 ascertained according to proof at the time of trial. However, Plaintiff
18 alleges on information and belief, that each and every Doe Debtor is in
19 some manner responsible for the acts and conduct of the other
20 Debtor(s), and were, and are responsible for the injuries, damages, and
21 harm incurred by Plaintiff and Creditor. Plaintiff and Creditor further
22 allege on information and belief that each such designated Debtor acted,
23 and acts, as the authorized agent, representative, and associate of the
24 other Debtor(s) in doing the things alleged herein.
25
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1 12. Whenever reference is made in this Complaint to any act of any
2 Debtor(s), that allegation shall mean that each Debtor acted individually
3 and jointly with the other Debtor(s).
4

5 13. Any allegation about acts of any corporate or other business Debtor(s)
6 means that the corporation or other business did the acts alleged through
7 its officers, directors, employees, agents, secretaries and/or
8 representatives while they were acting within the actual or ostensible
9 scope of their authority.
10
11

12 14. At all relevant times, Debtor committed the acts, caused or directed
13 others to commit the acts alleged in this Complaint. Additionally, some
14 or all of the Debtor(s) acted as the agent of the other Debtor(s), and all
15 of the Debtors acted within the scope of their agency if acting as an
16 agent of the other.
17
18

19 15. At all relevant times, Debtor knew or realized that the other Debtor(s)
20 were engaging in or planned to engage in the violations of law alleged
21 in this Complaint. Knowing or realizing that the other Debtor(s) were
22 engaged in or planning to engage in unlawful conduct, each Debtor
23 nevertheless facilitated the commission of those unlawful acts. Each
24 Debtor intended to and did encourage, facilitate, or assist in the
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1 commission of the unlawful acts, and thereby aided and abetted the
2 other Debtor(s) in the unlawful conduct.
3

4 **III. INTRODUCTION, FACTUAL AND GENERAL**

5 **ALLEGATION**

6 **MICHAEL MCCHRISTIAN'S LOAN**

7
8 16. Plaintiff purchased his home in June of 1998 and has been battling this
9 false foreclosure for 6 years with HOMECOMINGS, GMAC, Green
10 Tree, and Ditech. Plaintiff's file kept on being moved for example three
11 different servicing numbers were created for his account.
12
13

14
15 17. In September 2011 Plaintiff filed bankruptcy due to the market
16 downturn of 2008. During this time I owned two homes 10914
17 Elderwood Lane and 11118 Ironwood Drive both home in San Diego ca
18 92131. This filing was done in an effort to save both homes. He lost the
19 Elderwood home to foreclosure and moved back into Ironwood as it
20 was a rental at the time.
21
22
23

24
25 18. In August 2012, He applied for a loan modification with GMAC August
26 30, 2012, He received an update of the items needed to complete his
27 request and sent the items in. None the less, some time in November of
28

1 2012, He received a Notice of Default (“NOD”) with a sale date of
2 December 2012.
3

4 19. During October 25, 2012 , Plaintiff had a financial hardship and was
5 granted a Loan Modification by his mortgage servicer, GMAC Plaintiff
6 made all of his required trial loan modification payments as instructed.
7

8 20. Nonetheless in January, 2013, Plaintiff received a transfer notice
9 received stating the loan was being transferred to from GMAC to
10 GREEN TREE along with two letters stating all payments have been
11 received. Transfer date per the letter was Feb. 01, 2013. Note the letter
12 stated to send all payments to Green Tree effective as of this date. This
13 letter also has conflicting payments, fees, and balances from former
14 correspondence from GMAC.
15
16
17

18 21. On Feb. 8, 2013, Plaintiff received a short year history statement from
19 GMAC indicating his escrow was paid in full yet the letter indicates
20 payments have not been dispersed or occurred.
21
22

23 22. On Feb. 10, 2013, Plaintiff received another letter from GREEN TREE
24 indicating his loan has been assigned to a “Bobby M” effective date 2-
25 10-13.
26
27
28

1 23. On Feb 19, 2013, Plaintiff was informed by GREEN TREE
2 representative "Steve B" at Ext 31652 not to make any payments until
3 his file was received and uploaded from GMAC.
4

5 24. On Feb 25, 2013, Plaintiff spoke with Supervisor Mr. Thomas, to
6 follow the earlier representatives direction which was not to pay until
7 GREEN TREE received and uploaded GMAC's loan modification file
8 and confirmed the payment to be \$1386.00.
9
10

11 25. On February 27, 2013, Plaintiff requested a rush from Kimberley Ext
12 36280 and 22191, they were having trouble with the legal team for fees
13 needed to finalize his modification.
14

15 26. On March 9, 2013 Plaintiff spoke with Martin C at GREEN TREE for a
16 follow up and was told it still waiting on the loan mod to be uploaded.
17

18 27. On March 13, 2013, Plaintiff spoke again with Kimberly and again she
19 state the documents for his modification were being generated and it
20 should take a week.
21

22 28. On April 09 ,2013 Plaintiff received a letter from GREEN TREE of his
23 loan be assigned per the representative Steven B payments for the loan
24 modification trial from GMAC was extended again.
25

26 29. On April 15, 2013, Plaintiff received a notice or statement indicating to
27 pay \$28855.62 due by May 01, 2013. Plaintiff called immediately to
28

1 speak with Steven B at Ext 31652 but spoke with Dana ID262 and her
2 supervisor Rick who stated to disregard this notice.
3

4 30. On April 19,2013, Plaintiff spoke with Jonny Id #EWJ, FNMA Dept.
5 stating he reviewed Plaintiff's file and the report was that they were still
6 trying to uploaded his file to and from GMAC to the sever, to allow
7 review of the documents to match against the items sent from GMAC
8 tracking the trial payments ,which were confirmed as being received to
9 the current escrow analysis, known Error in the system and was waiting
10 for management to release the documents.
11
12
13

14 31. On May 13, 2013 Plaintiff received a letter from GREEN TREE
15 regarding his dispute of the Notice of Default ("NOD") filed stating
16 they would be resolve his issue or dispute by June 11, 2013.
17

18 32. On May 13, 2013, Plaintiff received a loan modification in the name of
19 GREEN TREE asking me to accept this offer by singing and retuning
20 the packet back to them by June 12, 2013.
21

22 33. On June 01,2013 Plaintiff received confirmation that his loan
23 modification was approved listing GREEN TREE as the servicer the
24 date of the notice on the contract is July 06, 2013.
25

26 34. On June 3, 2013, Plaintiff received a letter from GREEN TREE
27 regarding receipt of the final loan modification doc's. The letter
28

1 indicated his inquiry to as to when Plaintiff could expect the final loan
2 modification.
3

4 35. On Oct. 07, 2013, Plaintiff received a statement indicating the amount
5 due was \$2,701.34 .
6

7 36. On Oct. 23, 2013, received a letter from GREEN TREE indicating his
8 loan was current and apologizing for an inconvenience. On the same
9 day, Plaintiff also received the same day an escrow account disclosure
10 indicating his escrow was short \$1,482.42.
11

12 37. On Nov 15, 2013, Plaintiff received a letter acknowledging me filing
13 bankruptcy and his request to have monthly statements with the correct
14 numbers and report his loan current to the credit agencies.
15

16 38. On December 5, 2013 Plaintiff received past due notice \$3, 067.66
17 Plaintiff has copies of checks to show payments were made for all dates
18 through November 2013.
19

20 39. On December 06, 2013, Plaintiff received NOD and right to cure in
21 the amount of \$3,067.66
22

23 40. On December 10, 2013, Plaintiff received a notice of partial payment
24

25 41. On December 17, 2013, Plaintiff received another apology letter for
26 billing errors on their behalf and notices that were sent an error.
27
28

1 42. On January 03, 2014, Plaintiff received a letter stating his inquiry was
2 under review.
3

4 43. On January 07 2014, Plaintiff letter received from GREEN TREE
5 indicating they have received his complaint and was reviewing his file.
6

7 44. On January 20 2014, Plaintiff received bankruptcy notice and NOD and
8 right to cure letter in the amount of 1402.60.
9

10 45. On January 23 2014, Plaintiff received a letter from GREEN TREE
11 indicating his loan modification as a HAMP loan and determined that
12 the payment issues were related to fees capitalized during the
13 application process and that his account has been corrected and all fees
14 have been applied accordingly.
15

16 46. On March 01 2014, Plaintiff received a statement of information
17 indicating total due at the time was \$2,805.20 and that his account has
18 unapplied funds pending a partial payment.
19

20 47. On March 07, 2014, Plaintiff received a statement of information with
21 a payment due of \$4207.80 I requested a payment history and
22 breakdown.
23

24 48. On March 13, 2014, Plaintiff received a letter from loss mitigation from
25 GREEN TREE asking me to refinance or apply for a new loan
26 modification when he already had one.
27
28

1 49. On April 03, 2014, Plaintiff received a packet to apply for a new loan
2 modification.
3

4 50. On May 07, 2014, Plaintiff received statement of information indicating
5 total payments due of \$4,207.80. Statement indicated payment received
6 in the amount of \$1,388.00.
7

8 51. On May 12, 2014, Plaintiff received notice of availability of
9 homeownership counseling.
10

11 52. On May 13, 2014, Plaintiff received notice of default and right to cure
12 for the months of April 01 2014 to May 1 2014.
13

14 53. On May 15, 2014, Plaintiff spoke with Jill Johnson Ext 8745606 stated
15 some loan modifications would be granted and some would not be
16 acknowledged.
17

18 54. On May 16, 2014, Plaintiff received notice of partial payment and NOD
19 in the amount of \$1,206.62.
20

21 55. On July 7, 2014, Plaintiff received a statement of information
22 indicating a payment due of \$4,207.80.
23

24 56. On September 7 2014, Plaintiff received a statement of information
25 indicating amount owed \$5,610.40.
26

27 57. On September 10, 2014, Plaintiff received a loss mitigation options
28 requesting him to apply for another loan modification.

1 58. On October 08, 2014, Plaintiff received a packet to apply for a new loan
2 modification.
3

4 59. On December 07 2014, Plaintiff received a statement of information
5 indicating a payment of \$9,914.90.
6

7 60. On January 08, 2015, Plaintiff received a letter indicating his loan has
8 been sent to an attorney to initiate foreclosure proceedings along with
9 notice of a Chapter 11 filing GMAC/Residential Cap LLC.
10

11 61. On March 03, 2015, Plaintiff received a letter from GREEN TREE with
12 an incorrect breakdown of his account history as they were not
13 acknowledging the GMAC loan modification.
14

15 62. Just as the previous year Plaintiff received incorrect notices and threats
16 to foreclosure all year long. With each year ending with a sale date.
17

18 63. In July 2015, Plaintiff notified the CFPB about the above events.
19

20 64. In July 2016 GREEN TREE which was now part of Ditech stopped
21 reporting his payment history in their automated system., so that
22 Plaintiff could not see status of his account.
23

24 65. On October 17, 2016, Plaintiff received debt validation from Clear
25 Recon Corporation ("Clear Recon").
26

27 66. On November 29 2016, Plaintiff received 3 NOD with a sale date
28

1 67. On February 20 2017, Plaintiff received a stopping foreclosure notice
2 from Clear Recon
3

4 68. On March 31, 2017 Plaintiff sent to Ditech with a check for 5600 to
5 clear default at this point Cameron R was the representative.
6

7 69. On September 06, 2017 Plaintiff sent to Ditech regarding a return check
8 being a bank error
9

10 70. On November 01, 2017, Plaintiff received a return check in the amount
11 of \$9,500.00 from Ditech stating that they were starting the foreclosure
12 proceeding.
13

14 71. On December 01, 2017, Plaintiff received a letter from Ditech asking
15 proof of the disputed amount owed based on the knowledge of an
16 approved Loan modification.
17

18 72. On December 06, 2017, Plaintiff received a return check in the of
19 1500.00 stating that they were starting the foreclosure proceeding.
20

21 73. On December 18, 2017, Plaintiff sent 29 pages to Ditech to support his
22 claim and dispute of balance on account of Ditech stating they had no
23 record of his loan modification.
24

25 74. In January 2018, Plaintiff received 5 NOD.s with a sale date January 1,
26 2018 (again an error since no sales are set on New Years Day!).
27
28

1 75. On January 30, 2018, Plaintiff received from Clear Recon a

2 reinstatement letter with the incorrect amount to cue the debt.

3
4 76. On February 14 2018, Plaintiff sent a letter to Ditech requesting

5 information about the sale of his home.

6
7 77. On February 20 2018, Plaintiff received a letter from Ditech stating

8 they were looking Into his dispute.

9
10 78. On March 30, 2018, Plaintiff received a history that he requested from

11 Ditech from the CFPB which showed his filing complaints against them
12 throughout this process.

13
14 79. In April 2018 , Plaintiff filed chapter 13 to avoid foreclosure.

15 80. On December 4, 2018 his bankruptcy was dismissed without prejudice.

16
17 81. Plaintiff was shocked to find his home foreclosed i January 2019, With

18 Breckenridge being the buyer as he was making payments through the

19 month of December. Plaimntiff had received no notice of a sale date

20 from Clear Recon or Ditech during this time frame. DITECH purports

21 to serve as mortgagee of record and nominee for the Plaintiff in local

22 land records. DITECH takes action as mortgagee through documents

23 executed by “certifying officers” of DITECH. DITECH has designated

24 these individuals, who are officers or employees of Members or certain

1 third-parties who have contractual relationships with Members, as
2 officers of DITECH.
3

4 82. During the Mortgage Boom Era of 2002 to 2007, Wall Street investors
5 looked to feed their insatiable and reckless greed for profit by tapping
6 directly into the American Dream – home ownership. Mortgage lenders
7 and investment banks aggressively lured the American people into
8 predatory loans with teaser interest rates and into purchasing homes with
9 inflated appraisals and under the promise that the booming real estate
10 market would continue to boom. Wall Street took the soon to be toxic
11 loans and bundled them into “Mortgage Backed Securities” through a
12 process known as “Securitization.” These “securities” were then sold to
13 investors in the form of certificates, whereby the investors became the
14 “Certificateholders” of the securities that were to be fed by the toxic
15 loans.
16
17
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21 83. Knowing that the predatory loans would soon default and turn into toxic
22 assets, Wall Street placed their bets accordingly and bought exotic
23 insurance products in the form of “Credit default Swaps.”¹ Thus, when
24
25

26 ¹ In 1995, JPMorgan Chase, created the Credit Default Swap (CDS).
27

28 Essentially, a CDS is a form of insurance intended to protect the buyer of the

1
2 policy in case the borrower defaults on the loan. If the borrower defaults, the
3 buyer of the CDS receives a large payout for the cash value of the defaulted
4 loan. The main difference between a traditional insurance policy and a CDS is
5 that anyone can purchase a CDS, even those who have no direct “insurable
6 interest” in the lender. CDSs were instrumental during the housing bubble
7 because once the banks ran out of creditworthy borrowers, they had to turn to
8 uncreditworthy “subprime” borrowers. To avoid losses from default, the banks
9 moved these risky mortgages off their books by bundling them into
10 “securities” and selling them to investors. To induce the investors to buy these
11 securities the securities were then “insured” with credit default swaps. CDSs
12 allowed investors to bet against the average American to default on their
13 mortgage with little risk. CDS insurance was especially attractive to investors
14 who had knowledge of the subprime mortgage industry, since they knew the
15 likelihood of default on these loans was much higher. Notably, AIG Insurance
16 Company (“AIG”), an insurance carrier who owned a considerable market
17 share of these CDS policies, was unable to make good on these policies after
18 the housing bubble burst resulting in AIG seeking a government bailout. *See*
19 Justin Fox, *Why the Government Wouldn’t let AIG Fail?*, TIME Business
20 (September 16, 2008)
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1 the Mortgage Boom turned into a Mortgage Meltdown (which it did),
2 they would stand to make even more profit when the mortgage insurance
3 paid them out for their “losses.”
4

5 However, in their rush to “securitize” the predatory loans, Wall Street
6 failed to actually follow its own rules and regulations, creating the
7 instant situation where the securities are not actually backed by any
8 mortgages at all. Under the standard model, the promissory notes were
9 *supposed* to be sold and transferred into a trust pool (“Securitized
10 Trust”) that holds the promissory notes as collateral on the securities
11 bought by investors (“Certificateholders”). These “true sales” allow the
12 original lenders to move the notes off the books, eliminating the need to
13 maintain capital-adequacy reserves against default. The purpose of
14 securitizing collateral debt obligations was to provide a large supply of
15 money to lenders for originating loans, and to provide investment to
16 bond holders – which were expected to be relatively safe.
17

18 84. The Securitized Trusts, if ever formed properly, are subject to and
19 governed by (1) the Pooling and Servicing Agreement; (2) The
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21

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<http://www.time.com/time/business/article/0.8599.1841699,00.html>. Thus, in
27 the end, it was the American taxpayer who bore the burden of these CDS.
28

1 Mortgage and Loan Agreement; (3) the 424B5 Prospectus; (4) the
2 common law trust rules of New York, and (5) Internal Revenue Code
3 section 860A through 860G, better known as the Real Estate Mortgage
4 Investment Conduit (“REMIC”) rules.
5

6
7 85. An essential aspect of the mortgage securitization process is that the
8 Trust must obtain and maintain good title to the mortgage loans
9 comprising the pool for that certificate offering. This is necessary in
10 order for the Trustee of the purportedly Securitized Trust to be legally
11 entitled to enforce the mortgage loans in case of default. In addition to
12 other required documentation to complete the Collateral File of any
13 given loan, two documents relating to each mortgage loan must be
14 validly transferred to the Trust as part of the securitization process – the
15 promissory note and the security instrument (deed of trust or mortgage).
16 In this case, on information and belief, neither document was validly
17 transferred to the purported beneficiary trust, , which Ditech . will
18 purport to represent as “Trustee.”
19
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24 86. Here, Plaintiff alleges that the “true sales” never took place, because the
25 Note and Deed of Trust were already transferred and sold to an as yet
26 unidentified Third Party in or about December of the year 2005, and
27 thereby whatever trust acquired it from Homecomings did not at any
28

1 time acquire any legal, equitable, and pecuniary interest in Plaintiff's
2 Note and Deed of Trust from the original lender. As a result, thereof
3 DITECH, which purports to have been Plaintiff's creditor actually has
4 and had no secured or unsecured right, title, or interest in Plaintiff's
5 Note, Mortgage Deed of Trust and Residence, and has no right to
6 collect mortgage payments, demand mortgage payments, or report
7 derogatorily against Plaintiff's credit, or undertake any other right
8 conferred in the Deed of Trust,² including the purported "sale" of the
9 property to BRECKENRIDGE In January 2019.
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15 ² Plaintiff's allegations are supported by the recent ruling of the Massachusetts
16 Supreme Judicial Court in *U.S. Bank vs. Ibanez*, SJC-10694, 2011 WL 38071.
17 In *Ibanez*, the court invalidated two foreclosure sales, finding that the lower
18 court did not err in concluding that the securitization documents submitted by
19 U.S. Bank and Wells Fargo failed to demonstrate that they were the holders of
20 the mortgages. The court rejected the banks' argument that the mortgages were
21 transferred via the applicable Pooling and Servicing Agreement and made clear
22 that, to foreclose, the banks must prove a complete and unbroken chain of title
23 from origination to securitization trust in full compliance of the PSA, i.e.
24 establish ownership of the mortgage.
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1 87. Plaintiff alleges that the Defendant DITECH does not now, nor have
2 they ever, owned any right, title, or interest in the Plaintiff's Note, Deed
3 of Trust, or property.
4

5 88. Plaintiff further alleges that, on information and belief, that any TRUST
6 created by Homecomings and GMAC1 that Defendant DITECH will
7 claim owns Plaintiff's Note and Deed of Trust, has been dissolved due
8 to the disbursement and receipt of mortgage insurance payouts to
9 DITECH.
10
11

12 89. Nonetheless, DITECH attempts to take advantage of the complex
13 structured financial system to defraud yet another homeowner. Plaintiff
14 anticipates that DITECH will seek a Court-sanctioned bailout by
15 submitting blatantly fraudulent and fabricated "assignment" via a
16 Request for Judicial Notice, thereby committing a fraud on the Court,
17 and attempting to further mislead Plaintiff and the Court into believing
18 DITECH is an actual creditor, and entitled to enforce the underlying
19 obligation, when in fact they have no such standing.
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1 90. Plaintiff does not dispute that money is owed money on the mortgage
2 obligation.³ Rather, Plaintiff disputes the amount owed, and seeks the
3 Court's assistance in determining who the holder in due course is of the
4 Note and Deed of Trust, and specifically what rights, if any, DITECH,
5 and TRUST CREATED BY HOMECOMINGS has to claim a secured
6 or unsecured interest in Plaintiff's Note, Deed of Trust and Property in
7 the face of overwhelming evidence that DITECH is not and was not the
8 true holder of Plaintiff's financial obligation, and therefore an acts
9 undertaken by DITECH based on a claimed interest in the Note and
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19 ³ However, simply because Plaintiff do not dispute this fact, the Court should
20 not condone BONYNA 's fraudulent and predatory mortgage servicing
21 practices and allow it to collect on money it is not owed. Simply put, the Court
22 should not allow BONYNA to trample over 200 years of well-settled property
23 laws just because Plaintiff "owes somebody the money." There is no concept
24 in law regarding "Adverse Possession" of a debt obligation, and the Court
25 should decline the Defendant's invitation to create such a right.
26
27
28

1 Deed of Trust is void and without any legal force or effect, including
2 the attempt to sell the property.⁴
3

4 91. Plaintiff's information and belief is based on (1) a title report and
5 analysis of the Property's county records; (2) direct written and oral
6 communication with Defendants; (3) counsel's research, experience,
7 and extensive review of depositions, case law, amicus briefs,
8 correspondence, news articles, reports, and publicly available
9 securitization documents and practices; (4) a review of the purported
10 "Assignment of Deed of Trust"; 5) and an audit of multiple filings with
11 the Securities and Exchange Commission ("SEC"), including multiple
12 prospectus and Pooling and Servicing Agreements ("PSA") related to
13 DITECH Securitization Trusts.
14
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18 92. Nothing in the Plaintiff's complaint should be construed as an attack on
19 the concept or practice of the establishment of securitization trusts, or
20 an allegation of impropriety relating to the existence of securitization
21
22

23 ⁴ Plaintiff relies on the oft quoted maxim cited in *Barberan v. Nationpoint*, 706
24 F. Supp. 2d 408, 425 n. 10 (S.D.N.Y 2010) which sets that **someone who is**
25 **not a party to a contract has no standing to enforce its terms.**
26
27
28

1 trusts. When properly formed, these trusts conform to the established
2 law. Plaintiff complains, however, that its Note and Deed of Trust are
3 not part of any securitization trust, and the discussion is included to
4 properly illustrate the nature of the entity that purports to be Plaintiff's
5 creditor, and more importantly the irregularities with respect to the
6 attempted transfer of Plaintiff's contract to the Trust further illustrate
7 the allegations set forth in this complaint that the Defendant DITECH
8 did not ever acquire a pecuniary interest in the Plaintiff's Note and
9 Deed of Trust contracts.
10
11
12
13

14 93. Plaintiff alleges, believes, and thereon asserts that on or around the time
15 of origination of Plaintiff's loan, GMAC sold their loan to another
16 entity or entities. **That entity was *not* DITECH.**
17

18 94. Plaintiff alleges on information and belief that GMAC never sold,
19 transferred, or granted the Note or Mortgage to the Sponsor or
20 Depositor of the TRUST CREATED BY HOMECOMINGS, DITECH,
21 or any predecessor in interest of DITECH and that DITECH is merely a
22 third-party stranger to the loan transaction.
23
24

25 95. Plaintiff further alleges that none of the Defendants or Doe Defendants
26 can demonstrate or document that Plaintiff's Note was ever properly
27 endorsed, and transferred to DITECH, the TRUST CREATED BY
28

1 HOMECOMINGS or any other claimed predecessor in interest to
2 DITECH.
3

4 96. Plaintiff has repeatedly requested that DITECH verify the validity of the
5 debt. Although this information should be readily available to any
6 mortgage servicer. DITECH has failed to provide any evidence to verify
7 the owner and amount of Plaintiff's Mortgage or validate the claim to
8 Plaintiff's debt obligation.
9
10

11 97. Plaintiff is unaware of the existence of any purported assignment of the
12 Deed of Trust to DITECH and or TRUST CREATED BY
13 HOMECOMINGS, as there is no recorded assignment known to the
14 Plaintiff. The lack of a timely or valid actual assignment of the Note and
15 Deed of trust into the trust res of The FOR TRUST CREATED BY
16 HOMECOMINGS raises numerous red flags and further demonstrates
17 that Plaintiff's Note and Deed of Trust were not properly or actually
18 deposited into the TRUST CREATED BY HOMECOMINGS and that
19 the lack of an actual assignment further demonstrates that GMAC had
20 previously sold or transferred the interests in the Note and Deed of
21 Trust to an as yet unidentified third party
22
23
24
25
26

27 98. The failure to EVER deposit Plaintiff's Note into the TRUST
28 CREATED BY HOMECOMINGS at any time creates the consequence

ADVERSARY PROCEEDING COMPLAINT

1 that DITECH neither individually nor as trustee for TRUST
2
3 CREATED BY HOMECOMINGS can claim any legal or equitable
4 right, title, or interest in Plaintiff's Note, Mortgage, Deed of Trust or
5 Property since the Note and Deed of Trust are not part of the trust res.
6
7 Standing to seek collection is precluded as a matter of law. The
8 Defendant's cannot seek to collect payments under a contract that they
9 were not a party to, and not the beneficiary of an assignment of.⁵
10

11 99. Plaintiff does not allege or assert that he is a beneficiary or party to the
12 Trust PSA. Rather, Plaintiff alleges that the failure at any time to
13 transfer ownership of the Note and Deed of Trust to DITECH, and or
14 the TRUST CREATED BY HOMECOMINGS makes it impossible for
15 DITECH to claim, allege or assert that it was assigned, transferred or
16 granted Plaintiff's Note or Deed of Trust, or any interest therein, in any
17 manner whatsoever.
18
19
20

21 100. Plaintiff also alleges that the failure to properly and actually transfer
22 the Note and Deed of Trust to DITECH has resulted in an unperfected
23 lien that Defendants cannot enforce in any manner whatsoever, and that
24
25

26 ⁷*Barberan v. Nationpoint*, 706 F. Supp. 2d 408, 425 n. 10 (S.D.N.Y 2010)
27
28

1 only the actual successor in interest to the Note and Deed of Trust has
2 any interest therein.⁶
3

4 101. Plaintiff relied on the misrepresentations of DITECH and has been
5 damaged in the following ways: (1) multiple parties may seek to
6

7
8 ⁶ These allegations are identical to those brought by the Nevada Attorney
9 General against Bank of America, BAC Home Loans Servicing, and Quality,
10 in which Attorney General Catherine Cortez Masto alleges that these entities
11 engaged in unlawful and deceptive practices by misrepresenting to
12 homeowners that they had authority to foreclose despite the fact that these
13 were fatal deficiencies in transfers to the securitization Trusts. *State of Nevada*
14 *vs. Bank of America et al.*, No. 3:11-cv-00135-RCJ, (C.D. Nev August 30,
15 2011). The AG concludes that, “[t]hese are not mere technicalities. The PSA’s
16 spelled out specific procedures in order to ensure a proper transfer, protect the
17 Trusts as the holders in due course, and avoid subjecting the Trusts to taxation.
18 In addition, borrowers need to know the actual holders of their mortgages so
19 that, for example, they can investigate and assert available defenses in
20 foreclosures, including that the agent of the trustee lacks authority or standing
21 under the Note.” *Id.* at ¶ 146.
22
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1 enforce the debt obligation against him⁷; (2) the title to his home has
2 been clouded and rendered potentially unmarketable, as any would-be
3 buyer of Plaintiff's home will find themselves in legal limbo, unable to
4 know with any certainty whether they can safely buy Plaintiff's home or
5 get title insurance given the potential of competing claims between the
6 true owner of the Note and Deed of Trust or a successor or assign and
7 DITECH, and now the putative claims of Defendant
8 BRECKENRIDGE; (3) Plaintiff has been paying the wrong party for an
9 undetermined amount of time and overpaid in interest that was over
10 calculated; (4) Plaintiff is unable to determine whether he sent monthly
11 mortgage payments to the right party since there are potentially
12
13
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16

17 ⁷ The present existence or non-existence of a competing claim or creditor is
18 irrelevant to establish the Defendant's claims to the pecuniary rights under the
19 Note and Deed of Trust. Whether or not the true owner asserts their rights does
20 not allow the Defendant to collect payments under a contract it has no
21 demonstrable interest as a party or assignee, nor is it probative of any rights in
22 favor of the Defendant. Without more than a bald claim, the Defendant has no
23 rights superior to any other putative claimant. There is no legal concept of
24 "Adverse Possession" of a Promissory Note.
25
26
27
28

1 competing claims as between multiple creditors; (5) Plaintiff has
2 expended significant funds to cover the cost of litigation and related
3 costs.
4

5 102. In addition to seeking compensatory consequential, punitive, and other
6 damages, Plaintiff seeks Declaratory Relief as to whether the Deed of
7 Trust (Mortgage) secures any obligation of Plaintiff in favor of
8 DITECH and/or the TRUST CREATED BY HOMECOMINGS such
9 that any of them can collect Plaintiff's mortgage payments, demand
10 payment, engage in debt collection activities, or undertake any other
11 right conferred upon the Lender in the Note and Deed of Trust,
12 including conducting a valid non-judicial foreclosure sale of the
13 property to the exclusion of the true beneficial owner.
14
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19 **IV. DITECH HAS NO INTEREST IN THE NOTE AND DEED**
20 **OF TRUST**

21 103. As will be shown in more detail below, the Plaintiff alleges on
22 information and belief that:
23

- 24 a. The beneficiary under his Note and Deed of Trust is
25 presently unknown.
26
27 b. Defendant DITECH is not the successor or assign of the
28 Note and Deed of Trust.

ADVERSARY PROCEEDING COMPLAINT

1 c. At no time did GMAC effectuate any assignment of any
2 interest in the Note and Deed of Trust, directly or indirectly,
3 to either Defendant DITECH or the TRUST CREATED BY
4 HOMECOMINGS, or any predecessor in interest to these
5 entities.
6
7

8 104. California Commercial Code section 3301 limits a negotiable
9 instrument's enforcement to the following:
10

11 "Person entitled to enforce" an Instrument means (a) the
12 holder of the instrument, (b) a nonholder in possession of the
13 instrument who has the rights of a holder, or (c) a person not
14 in possession of the instrument who is entitled to enforce the
15 instrument pursuant to Section 3309 or subdivision (d) of
16 Section 3418. A person may be a person entitled to enforce
17 the instrument even though the person is not the owner of the
18 instrument or is in wrongful possession of the instrument.
19
20
21

22 105. On information and belief, none of the Defendants were or are
23 present holders in due course of Plaintiff's Note such that they can
24 enforce Plaintiff's obligation and demand mortgage payments or
25 undertake any activities permitted under the relevant Deed of Trust
26
27
28

1 including the collection of moneys or the exercise of rights under the
2 Deed of Trust, including the power of sale.
3

4 106. On information and belief, Defendant DITECH was not and is not
5 a nonholder in Possession of Plaintiff's Note who has rights of the
6 holder.
7

8 107. If there is a holder in due course of Plaintiff's Note at issue,
9 pursuant to California Commercial Code section 3301, et seq. it is the
10 entity that can actually establish a Pecuniary, legal, and equitable
11 interest in the Property, and provide an unbroken chain of title to
12 Plaintiff's Note and Mortgage.⁸
13
14
15

16 ⁸ The testimony of Linda DeMartini, a 10-year litigation manager for
17 Countrywide Home Loans in *In Re Kemp*, Case No. 0S-18700-JHW (Bankr.
18 D.N.J. November 16, 2010) (for Publication) exposed the Shoddy handling of
19 mortgage notes and deeds of trust of securitized mortgages required to perfect
20 "holder in due Course" status. In that case Linda DeMartini described how
21 Countrywide failed to adhere to the most rudimentary of securitization
22 procedures, such as transferring the original promissory note to the trusts that
23 had purchased the loans, as required under the pooling and servicing
24 agreement Ms. DeMartini testified that it was standard Practice for
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5 Countrywide to warehouse the original notes, which were stored in Simi
6 Valley, California despite securitization contracts that required the notes to be
7 physically transferred to Sponsors trustees or custodians of the securitized
8 trusts. The findings in court decisions all over the country, news stories,
9 attorneys general's complaints, including one by the New York Attorney
10 General against Defendant New York Bank Mellon , and state and federal
11 investigations reveal that business practices like Countrywide's were common
12 place and, like Countrywide, most lenders failed to properly comply with
13 protocols required to properly securitize mortgage loans. Ms. Martini's
14 testimony has been corroborated by Abigail Field of CNN, who reviewed
15 foreclosures filed in two New York counties between 2006 and 2010 in which
16 of the 104 loans that were examined were endorsed by Countrywide: ". If the
17 lack of endorsement on these notes is typical - and 104 out of 104 suggests it
18 its – the problem occurs across Countrywide securities." *See Abigail Field, At*
19 *Bank of America, More Incomplete Mortgage Docs Raise More Questions,*
20 *Fort., (June 3, 2011), <http://finance.fortune.cnn/2011/06/03/at-bank->*
21 *of/america-moreincomplete-mortgage-docs-nad-more-questions/.*
22
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1 108. On information and belief none of the Defendants, were/are
2 entitled to enforce Plaintiff's Note pursuant to § 3309 or subdivision (d)
3 of § 3418.
4

5 109. Plaintiff alleges that, prior to demanding mortgage payments from
6 Plaintiff none of the Defendants or Doe Defendants had, nor presently
7 have, a secured or unsecured legal, equitable, or pecuniary interest in
8 Plaintiff's Note and/or Deed of Trust as required under California law -
9 irrespective of who is actually in physical possession of Plaintiff's Note.
10

11 110. Plaintiff alleges on information and belief that DITECH and/or its
12 agents are fraudulently enforcing a debt obligation in which they have
13 no pecuniary equitable or legal interest, and thus no standing to seek
14 collection or enforce the rights contained in the Note and Deed of Trust.
15 Thus, DITECH's conduct is part of a fraudulent debt collection scheme
16 to the detriment of the Plaintiff.
17
18
19
20

21 **V. DEFENDANT DITECH'S DEBT COLLECTION EFFORTS**

22 111. The Plaintiff is informed, and believe and thereon allege that in
23 spite of having no legitimate, demonstrable, and/or documented interest
24 in the subject Mortgage Note the defendant DITECH through its agents
25 and employees, has undertaken multiple and ongoing overt acts to
26 obtain moneys and ultimately to attempt to obtain title to Plaintiff's
27
28

1 property from the Plaintiff related to the Defendant DITECH's false
2 claim of ownership of the Mortgage Note and Deed of Trust, including
3 but not limited to the following acts which were neither authorized nor
4 undertaken on behalf of a real party in interest to the Note and/or Deed
5 of Trust:
6
7

8 112. Mailing, or causing to be mailed, monthly billing statements to the
9 Plaintiff asserting a right to collect mortgage payments. (The names and
10 identities of those individuals who have sent payment requests to the
11 Plaintiff is unknown to the Plaintiff at this time, and discovery is
12 necessary to properly identify same. Leave of the Court will be made to
13 request an opportunity to file an amended complaint that fully and
14 completely identifies the ongoing overt acts in this regard, as well as the
15 identity of the DITECH employee or agent who authored the payment
16 demands.) Payments in this regard total exceed \$75,000.00, but the
17 Defendants had no right to collect said payments.
18
19
20
21

22 113. The acts indentified herein where not authorized by any beneficial
23 owner of the Note and/or Deed of Trust.
24

25 114. On January 10, 2019, Defendant DITECH, through its agent and
26 employee Clear Recon purportedly "sold" the Plaintiff's property to
27 BRECKENRIDGE by way of a non-judicial foreclosure "sale" who
28

1 now assert an ownership interest in the subject property to the exclusion
2 of the Plaintiff's interests.
3

4 115. The names and identities of those all the individuals who have
5 sent payment demands to the Plaintiff, and recorded and/or caused to be
6 recorded with the County Recorder are unknown to the Plaintiff at this
7 time, and discovery is necessary to properly identify same. Leave of the
8 Court will be made to request an opportunity to file an amended
9 complaint that fully and completely identifies the ongoing overt acts in
10 this regard, as well as the identity of the DITECH employee or agent
11 who authored the respective demands.)
12
13
14
15

16 **VI. PLAINTIFF HAS SUFFERED AND CONTINUES TO SUFFER,**
17 **SIGNIFICANT MONETARY, LEGAL AND EQUITABLE**
18 **DAMAGES**

19 116. The conduct described above by DITECH as well as their
20 respective agents and employees, was malicious because Defendants
21 knew that they were not acting on behalf of the current pecuniary
22 beneficiary of the Note and Deed of Trust. However, despite such
23 knowledge, Defendants continued to demand and attempt to collect
24 Plaintiff's mortgage payments and take other collection actions as
25 against the Plaintiff.
26
27
28

1 117. Defendants engaged, and are engaging in, a pattern and practice of
2 defrauding Plaintiff, in that, on information and belief Defendants failed
3 to properly credit payments made, incorrectly calculated interest on the
4 accounts, and failed to accurately debit fees, as these payments
5 belonged to the true beneficiary of the Note and Deed of Trust, and
6 have never belonged to Defendant DITECH.
7

8
9 118. On information and belief, at all times material DITECH had, and
10 has, actual knowledge that Plaintiff's accounts were not accurate, but
11 that Plaintiff would continue to make further payments based on
12 Defendant's inaccurate accounts.
13
14

15 119. On information and belief, Plaintiff made payments based on the
16 improper, inaccurate, and fraudulent representations as to Plaintiff's
17 accounts.
18

19 120. As a direct and proximate result of the actions of the Defendants,
20 set forth above, Plaintiff overpaid in interest.
21

22 121. As a direct and proximate result of the actions of the Defendants
23 set forth above, Plaintiff's credit and credit score have been severely
24 damaged. Specifically because of the derogatory credit reporting on
25 their credit report on behalf of DITECH, Plaintiff may be unable to
26
27
28

1 refinance out of his present loan, buy another property, or sell his home,
2
3 or otherwise have access to credit.

4 122. As a direct and proximate result of the actions of the Defendant
5 DITECH set forth above, the title to Plaintiff's home has been
6
7 slandered, clouded, and its salability has been rendered potentially
8
9 unmarketable.

10 123. As a direct and proximate result of the actions of the Defendants
11 set forth above, Plaintiff does not know who the current beneficiary of
12
13 his Note and Mortgage actually is, such that he is now subject to double
14
15 financial jeopardy.

16 124. As a direct and proximate result of the actions of the Defendants
17 set forth above, *multiple* parties can attempt to enforce Plaintiff's debt
18
19 obligation.

20 125. The conduct of DITECH and GREEN TREE has led to the
21
22 imminent loss of Plaintiff's home and to additional pecuniary damages.
23
24 The pecuniary damages include, but are not limited to, the costs of over
25
26 calculation and overpayment of interest, the costs of repairing Plaintiff's
27
28 credit, the reduction and/or elimination of Plaintiff's credit limits, the
costs associated with removing the cloud from their property title and
attorneys' fees, in an amount to be proven at trial.

1 126. The conduct of DITECH and GREEN TREE ' conduct, was
2 malicious because Defendants did not know the identity of the current
3 and true beneficiary of Plaintiff's note and Deed of Trust, yet they
4 intentionally and fraudulently covered up this defect by wrongfully
5 recording multiple fraudulent documents, which would enable them to
6 *illegally and fraudulently* collect on Plaintiff's debt, attempt to
7 undertake a fraudulent "Trustee's Sale," and consequently render the
8 title to the property unmarketable.

9 127. The title to Plaintiff's Property has been rendered unmarketable
10 and unsalable because of the multiple claims being made against
11 Plaintiff's debt and underlying security (the "Subject Property"), and
12 because of the putative sale of the property to BRECKENRIDGE. If the
13 Assignment of the Deed of Trust, together with the Notice of Default,
14 and the "Trustee's Deed upon Sale" are not cancelled and set aside,
15 together with all other documents recorded and identified herein,
16 Plaintiff will be incurably prejudiced. Plaintiff will be denied the
17 opportunity to identify and negotiate with their *true creditor*, exercise
18 their right to verify and validate his debt, and now suffer the
19 consequences of a false claim of ownership asserted by
20 BRECKENRIDGE.

1
2 **VII. PLAINTIFF HAS OFFERED TO AND IS READY WILLING**
3 **AND ABLE TO UNCONDITIONALLY TENDER HIS**
4 **OBLIGATION.**

5 128. Plaintiff offers to and is ready, willing, and able to
6
7 unconditionally tender his obligation.⁹

8
9 ⁹ Case law makes clear that **Plaintiff is only required to allege a credible**
10 **offer of tender**, not actually tender. *Alicia v. GE Money Bank*, No. C 09-00091
11 SBA, 2009 WL 2136969 at *3 (N.D. Cal. July 16, 2009) (“ . . .debtor must
12 allege a credible tender in the amount of the secured debt. . .”). Moreover,
13 tender is **not** required when the owner’s action attacks the validity of the
14 underlying debt because the tender would constitute an affirmation of the debt.
15 *Sacchi c. Mortgage Electronic Registration Systems, Inc.*, No. CV 11-1658
16 AHM, 2011 WL 2533029 (C.D. Cal June 24, 2011, at *16 (emphasis added)
17 (citing *Onofrio v. Rice*, 55 Cal. App. 4th 413, 424 (1997); *Stockton v. Newman*,
18 148 Cal. App 2d 558, 564 (1957). *See also*, *Foulkrod v. Wells Fargo Financial*
19 *California Inc.*, No. CV 11-732-GHK (AJWx) (C.D. Cal. May 31, 2011) (“ . .
20 .requiring plaintiff to tender the amount due on her loan at This time would be
21 illogical and inequitable given that he disputes that Wells Fargo has any rights
22 under the loan.”) In light of the fact that Plaintiff contests the legitimacy of the
23
24
25
26
27
28

1 129. While Plaintiff maintains that the Defendants are complete
2
3 strangers to them without any demonstrable right, title, or interest in the
4 Plaintiff's property, Note, or Deed of Trust the Plaintiff has the
5 resources available, and other resources readily available, to place them
6 in a position whereby they may tender the entire loan proceeds owed to
7 their legitimate lender, and/or their legitimate successors, including past
8 due interest claims and penalty claims asserted by the Defendants which
9 as to be determined after deduction for non negotiable checks issued
10 by Ditech (They are non negotiable due to the fact of the present
11 Bankruptcy of Ditech which close all its former bank accounts.)
12
13
14

15 130. The Plaintiff's resources for tender include:
16

- 17 d. The property secured by the Note and Deed of Trust has an
18 approximate fair market value far in excess of what Ditech
19 sold the property. Pursuant to Cal. Civ. Proc. Code Section
20 580d, the Plaintiff's liability under the Note and Deed of Trust
21
22

23
24 Defendants' claims to the mortgage payments it would be **illogical and**
25 **inequitable** to require Plaintiff to actually tender the amount given that
26 Plaintiff disputes whether Defendants have any rights under the loan. *See*
27 *Onofio v. Rice*, 55 Cal. App. 4th 413, 424 (1997).
28

1 is limited to the security interest in the property itself. Thus
2 the property itself is and should be considered sufficient
3 tender of the Plaintiff's obligation since Plaintiff's obligation
4 under the Note and Deed of Trust will never exceed the
5 security interest in the property itself. In the event the
6 Defendants are the legitimate beneficiaries of the Note and
7 Deed of Trust the subject property represents 100% of
8 security interest created therein, and is available to the
9 legitimate beneficiary pursuant to the security terms set forth
10 in the Deed of Trust.
11
12
13
14

15 131. The Plaintiff has ready access to savings, investments, and
16 retirement savings , which can be liquidated as needed with little or no
17 tax consequences in as little as 30 days.
18

19 132. The Plaintiff is securing a financing commitment from various
20 lenders which sums can be used to provide any required tender.
21

22 133. Based on the foregoing, Plaintiff has set forth factual allegations
23 demonstrating that he has the resources, or has the means to readily
24 obtain them, to be in a position to tender the entire loan proceeds.
25
26
27
28

1 **VIII. FIRST CAUSE OF ACTION – DECLARATORY RELIEF; TO**
2 **DETERMINE STATUS OF DEFENDANT’S CLAIMS [28**
3 **U.S.C. § 2201, 2202]**

4 **[As against DITECH, BRECKENRIDGE and GREEN TREE]**

5 134. Plaintiff hereby incorporates by reference each and every one of
6 the preceding paragraphs as if the same were fully set forth herein.

7 135. Section 2201(a) of Title 28 of the United States Code states:

8 “In a case of actual controversy within its jurisdiction, except
9 with respect to Federal taxes other than the actions brought
10 under section 7428 of the Internal Revenue Code of 1986, a
11 proceeding under section 505 or 1146 of title 11, or in any civil
12 action involving an antidumping or countervailing duty
13 proceeding regarding a class or kind of merchandise of a free
14 trade area country (as defined in section 516A(f)(10) of the
15 Tariff Act of 1930), as determined by the administering
16 authority, any court of the United States, upon the filing of an
17 appropriate pleading, may declare the rights and other legal
18 relations of any interested party seeking such declaration,
19 whether or not further relief is or could be sought. Any such
20 declaration shall have the force and effect of a final judgment
21 or decree and shall be reviewable as such.”
22
23
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1 136. Section 2202 of Title 28 of the United States Code states:

2 “Further necessary or proper relief based on a declaratory
3 judgment or decree may be granted, after reasonable notice
4 and hearing, against any adverse party whose rights have been
5 determined by such judgment.”
6
7

8 137. Plaintiff alleges that neither Ditech , and or the related DITECH
9 trust (“TRUST CREATED BY HOMECOMINGS”) are the successor
10 and/or assign of the interests of the original lender GMAC.
11

12 138. Plaintiff allege that neither Ditech , or the related DITECH trust
13 (“TRUST CREATED BY HOMECOMINGS) have a secured or
14 unsecured legal, equitable, or pecuniary interest in the lien evidenced by
15 the Deed of Trust and that the purported recorded assignments have no
16 value since they were executed fraudulently and without the authority,
17 direct or indirect, stated or implied, of the current beneficiary of the
18 Note and Deed of Trust.
19
20
21

22 139. Plaintiff further alleges that none of the Defendants is the actual
23 successor in interest to GMAC with respect to the Note an Deed of
24 Trust, since GMAC sold, transferred or assigned all right title and
25 interest to a third party at some time well prior to the interests purported
26 to be asserted by the Defendants.
27
28

1 140. Plaintiff further allege that Defendant DITECH had nothing to sell
2 to Defendant BRECKENRIDGE on January 10, 2019.
3

4 141. At some time after February 28, 2005, Defendant DITECH claims
5 they have a secured enforceable interest in, and perfected lien against,
6 the Plaintiff's Note, Deed of Trust and Property.
7

8 142. At some time after February 28, 2005, Defendant DITECH claims
9 they have standing to obtain all of the rights and benefits under the Note
10 and Deed of Trust to the exclusion of the true beneficiary.
11

12 143. On January 10, 2019, Defendant BRECKENRIDGE claims they
13 have own the subject property by virtue of a purchase/sale undertaken
14 by and between Defendant DITECH and Defendant BRECKENRIDGE.
15
16

17 144. Thus, the competing allegations made by Plaintiff above establish
18 that a real and actual controversy exists as to the respective rights of the
19 parties to this matter with respect to the claimed interest by the
20 Defendant DITECH to the benefits and rights under the Note and Deed
21 of Trust, and the Plaintiff's denial that the Defendants have any right, or
22 standing to assert any right, under the Note and Deed of Trust, together
23 with the competing rights of potential putative creditors, and the
24 competing rights asserted between the Plaintiff and Defendant
25 BRECKENRIDGE as to the ownership interest of the subject property.
26
27
28

1 145. Accordingly, Plaintiff requests the Court make a finding and issue
2 appropriate orders stating that DITECH and the Doe Defendants, have
3 no right or interest in Plaintiff's Note, Deed of Trust, or the Property,
4 which authorizes them, in fact or as a matter of law, to any benefit or
5 right set forth in the Note and Deed of Trust, and consequently the
6 "sale" to Defendant BRECKENRIDGE is and was void an without any
7 force or effect.
8
9
10

11 146. Plaintiff will suffer prejudice if the Court does not determine the
12 rights and obligations of the parties because: (1) Plaintiff will be denied
13 the opportunity to identify and document their true and correct
14 creditor/lender and negotiate with them; (2) Plaintiff will be denied the
15 right to conduct discovery and have the claims of DITECH verified by a
16 custodian of records who has personal knowledge of the loan and all
17 transactions related to it; (3) Plaintiff will be denied the opportunity to
18 discover the true amount he still owes minus any illegal costs, fees and
19 charges; (4) Plaintiff will face dispossession of his family home.
20
21
22
23

24 147. Due to the actual case and controversy regarding competing
25 claims and allegations, it is necessary that the Court declare the actual
26 rights and obligations of the parties and make a determination as to
27 whether the claims of DITECH and BRECKENRIDGE are enforceable
28

1 and whether they is secured by any right, title or interest in Plaintiff's
2
3 Property.

4 148. Furthermore, the conduct of DITECH and one or more Doe
5 Defendants, and each of them, as herein described, was so malicious
6 and contemptible that it would be looked down upon and despised by
7
8 ordinary people. Plaintiff is therefore entitled to punitive damages in an
9
10 amount appropriate to punish Defendants and to deter others from
11
12 engaging in similar conduct.

13 **IX. SECOND CAUSE OF ACTION – QUASI CONTRACT**
14 **[As against DITECH and GREEN TREE]**

15 149. Plaintiff hereby incorporates by reference each and every one of
16
17 the preceding paragraphs as if the same were fully set forth herein.

18 150. DITECH and others acting in concert with them for the pecuniary
19
20 benefit of DITECH, demanded monthly mortgage payments from
21
22 Plaintiff and continued to collect payments from Plaintiff. Plaintiff
23
24 reasonably relied upon DITECH assertion that it/they are/were entitled
25
26 to the benefit of Plaintiff's mortgage payments.

27 151. DITECH and others acting in concert with them, knowingly
28
accepted payments and retained them for its own use knowing DITECH

1 had not acquired and never did acquire an interest in Plaintiff's Note,
2 such that they could accept or keep Plaintiff's payments. It would be
3 inequitable for DITECH to retain the payments it received from
4 Plaintiff that it did not have the legal authority to collect. The equitable
5 remedy of restitution when unjust enrichment has occurred is an
6 obligation created by the law without regard to the intention of the
7 parties, and is designed to restore the aggrieved party to their former
8 position by return of the thing or its equivalent in money.
9
10
11

12 152. DITECH has been unjustly enriched by collecting monthly
13 payments from Plaintiff when it has and had no interest in his Note or
14 Deed of Trust.
15

16 153. Plaintiff seeks restitution for any payments made to DITECH
17 including those payments made to others acting in concert with
18 DITECH for its benefit that were not actually paid to the lender or
19 beneficiary, if any.
20
21
22

23 **X. THIRD CAUSE OF ACTION – NEGLIGENCE**
24 **[As against DITECH and GREEN TREE]**
25

26 154. Plaintiff hereby incorporates by reference each and every one of
27 the preceding paragraphs as if the same were fully set forth herein.
28

1 155. Defendant DITECH and Does 1 through 10, are jointly and
2 severally liable for DITECH negligent and reckless conduct.
3

4 156. DITECH as the purported beneficiary of the Note and Deed of
5 Trust together with its agents and employees, including its purported
6 “trustee” have a duty to exercise reasonable care¹⁰ and skill to follow
7 California law with regard to enforcement of monetary obligations,
8 and to refrain from taking or failing to take any action against
9 Plaintiff that they did not have the legal authority to do. This
10 includes not collecting or demanding mortgage payments when they
11
12
13

14
15 ¹⁰ Normally, lenders and servicers do not owe a duty of care. *Nymark v. Heart*
16 *Fed Savings and Loan Assn.*, 231 Cal. App. 3d 1089, 1093 (1991). However, a
17 bank may be liable in negligence if it fails to discharge its contractual duties
18 with reasonable care. *Das v. Bank of Am.*, 186 Cal. App. 4th 727, 741 (2010).
19 Additionally, a bank may be liable for aiding and abetting a tort when it
20 renders “substantial assistance” to a tortfeasor during a business transaction
21 that it knowingly aided in the commission of the tort. *Id.* (citing *Casey v. U.S.*
22 *Bank Nat. Assn.*, 127 Cal. App. 4th 1138, 1144-45). In this case, Freddie Mac is
23 NOT loaned money, and serves only as a trustee for a trust that claims to own
24 his Note.
25
26
27
28

1 do not have the right to enforce the obligation, causing the Plaintiff to
2 overpay in interest, making credit reports to credit bureaus, and
3 failing to keep an accurate accounting of Plaintiff's mortgage
4 payments, credits, and debits.
5

6
7 157. DITECH has a duty to exercise reasonable care and skill to refrain
8 from taking any action against Plaintiff that they do not have the
9 legal authority to do. As a direct and proximate result of the reckless
10 negligence, utter carelessness, and blatant fraud of the Defendant as
11 set forth above, the Chain of Title to Plaintiff's Property has been
12 rendered potentially unmarketable and defective and has caused
13 Plaintiff to potentially lose saleable title to the subject property.
14
15

16
17 158. DITECH individually and on behalf of the TRUST CREATED
18 BY HOMECOMINGS, breached that duty when, in spite of having
19 no pecuniary or beneficial interest in the Plaintiff's Note and Deed of
20 Trust, it held itself out as Plaintiff's creditor, and improperly sought
21 the benefits there under without standing to do so.
22
23

24 159. As a direct and proximate result of the negligence and
25 carelessness of the Defendant as set forth above, Plaintiff suffered,
26 and continues to suffer, general and special damages in an amount to
27 be determined at trial, including attorney's fees, and costs of bringing
28

1 suit to dispute, validate, and challenge said Defendant's purported
2 rights to enforce the debt obligations against them.
3

4
5 **XI. FOURTH CAUSE OF ACTION – FOR VIOLATION OF 15**
6 **U.S.C. § 1692, ET SEQ.**
7 **[As against DITECH and GREEN TREE]**

8 160. Plaintiff hereby incorporates by reference each and every one of
9 the preceding paragraphs as if the same were fully set forth herein.
10

11 161. Federal law prohibits the use of “any false, deceptive, or
12 misleading representation or means in connection with the collection of
13 any debt . . . including the false representation of . . . the character,
14 amount, or legal status of any debt . . . and the threat to take any action
15 that cannot legally be taken...”
16

17
18 162. Defendant DITECH:

- 19 e. Is one of the largest debt collectors in the United States and a
20 large part of its business is the collection of debt for third
21 parties, and as trustee for billions of dollars of securitized
22 mortgage debt, regular acts as trustee in the collection of the
23 securitization trusts; and
24
25
26
27
28

- 1 f. It's role in the collection of Plaintiff's Note and Deed of Trust
2 is as Trustee for another entity, a mortgage securitization
3 trust, and not for itself or its own benefit; and
4
5 g. Regularly uses interstate commerce, including the telephones
6 and the mails with the principal purpose to collect the debts of
7 another, in this case the mortgage backed securitization trust
8
9 h. In illegally attempting to collect on Plaintiff's debt obligation
10 in the manner described herein, Defendants DITECH falsely
11 represented the status of the debt, in particular, that it was due
12 and owing to Defendant DITECH, and or its principal, at the
13 time the suit was filed;
14
15 i. Falsely representing or implied that the debt was owing to
16 Defendant DITECH, or its principal, as an innocent purchaser
17 for value, when in fact, such an assignment had not been
18 accomplished;
19
20 j. Threatened to take action, namely engaging in collection
21 activities that cannot legally be taken by them;
22
23 k. Did in fact take action, namely by demanding payments from
24 the Plaintiff, recording a fraudulent "Assignment of Deed of
25 Trust" a notice of "Default," a fraudulent notice of
26
27
28
ADVERSARY PROCEEDING COMPLAINT

1 “Trustee’s Sale” and a fraudulent “Trustee’s Deed upon Sale”

2 when such action cannot legally be taken by them; and

- 3
- 4 1. Attempted to collect on the promissory note under false
- 5 pretenses; namely that DITECH was assigned Plaintiff’s debt
- 6
- 7 when in fact they were not.

8 163. The conduct described above, and more fully in the body of this

9

10 complaint, is in violation of 15 U.S.C. § 1692, et seq and therefore the

11 Plaintiff is entitled to any and all damages, rights, and remedies

12 provided therein.

13

14 **XII. FIFTH CAUSE OF ACTION – VIOLATION OF BUSINESS**

15 **AND PROFESSIONS CODE SECTION 17200, ET SEQ.**

16 **[As against DITECH and GREEN TREE]**

17 164. Plaintiff hereby incorporates by reference each and every one of

18 the preceding paragraphs as if the same were fully set forth herein.

19 165. Defendant’s conduct, for the reasons stated herein and fully

20 described above, is in direct violation of Cal. Penal Code Section

21 532(f)(a)(4), because, as shown and fully described above, the

22 Defendants have caused to be recorded multiple notices with the County

23 Recorder which the Defendants knew and know contain deliberate

24 misstatements, misrepresentations, and omissions.

25

26

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1 166. Defendant's conduct, for the reasons stated herein and fully
2 described above, is in direct violation of Cal. Penal Code Section 518,
3 because, as shown and fully described above, the Defendants have
4 threatened and continue to threaten the Plaintiff with threats to
5 dispossess the Plaintiff of possession and ownership of his property, and
6 threaten to foreclose and evict the Plaintiff from his property, and
7 threaten the Plaintiff with forcible eviction from his property though the
8 use of a public officer (Sheriff) from the Plaintiff's home unless the
9 Plaintiff pays moneys Demanded by the Defendants.
10
11
12
13

14 167. California Business and Professions Code section 17200, et seq.,
15 prohibits acts of unfair competition, which means and includes any
16 unlawful, unfair or fraudulent business act and conduct that is likely to
17 deceive and is fraudulent in nature.
18

19 168. As more fully described above, Defendants' acts and practices are
20 unlawful, unfair, and fraudulent, and constitute an attempt to obtain
21 through threats and extortion, the Plaintiff's property (money and home)
22 under threat of imminent loss of their home This conduct is ongoing
23 and continues to date.
24
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1 169. Defendants engage in unfair, unlawful¹¹, extortive and fraudulent
2 business practices with respect to mortgage loan servicing and related
3 matters by, among other things:
4

5 m. Executing and recording false and misleading documents;¹²
6

7 n. Executing and recording documents without the legal
8 authority to do so;
9

10
11
12 ¹¹ “Unlawful” acts or practices are those forbidden by law, be it civil or
13 criminal, federal, state or municipal, statutory, or court-made. *Saunders v.*
14 *Superior Court*, 27 Cal. 4th 832 (1994); *Hewlett v. Squaw Valley*, 54 Cal. 4th
15 499 (1997).
16

17 ¹² Defendants recording of two assignments, a Notice of Default, and a Notice
18 of Trustee Sale violates Cal. Penal Code section 532(f)(a)(4), which prohibits
19 any person from filing a document related to a mortgage loan transaction with
20 the county recorder’s office which that person knows to contain a deliberate
21 misstatement, misrepresentation, or omission. The facts demonstrate that
22 Defendants have committed mortgage fraud by filing said documents with the
23 county recorder’s office with knowledge that the document contained a
24 deliberate misstatement, misrepresentation, or omission of fact.
25
26
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- o. Failing to disclose the principal for which documents were being executed and recorded in violation of Cal. Civ. Code section 1095;
- p. Demanding and accepting payments for debts that were no standing to collect exists;
- q. Violating the Security First Rule;
- r. Reporting payments as late to credit bureaus without the legal right or authority to do so;
- s. Acting as a beneficiary without the legal authority to do so;
- t. Scheduling a “Trustee’s Sale” of the subject property without the legal authority to do so; and
- u. Using threats to forcibly evict the Plaintiff from his home absent voluntary payments of moneys the Defendant is not entitled to demand.
- v. Conducting a “trustee’s sale” of the subject property.
- w. Other deceptive and coercive practices as described herein.

170. As more fully described above, Defendants’ acts and practices are likely to deceive members of the public.

1 171. As more fully described above, Defendants acts and practices are
2 unfair and the harm cause by the conduct outweighs any benefits that
3 the conduct may have.
4

5 172. Plaintiff alleges that by engaging in the above described acts and/or
6 practices as alleged herein Defendants violate several laws including
7 Cal. Bus. and Prof. Code section 17200, et seq. and must be required to
8 disgorge all profits related to their unfair, unlawful, and deceptive
9 business practices.
10
11

12 173. Plaintiff alleges that Defendant's misconduct, as alleged herein, gave
13 Defendants an unfair competitive advantage over their competitors. The
14 scheme implemented by Defendants is designed to defraud California
15 consumers and enrich the Defendants.
16
17

18 174. Plaintiff alleges that Defendant's misconduct is likely to deceive the
19 public based on the Defendant's filings in the records of the County.
20

21 175. The foregoing acts and practices have caused substantial harm to
22 California consumers, including Plaintiff.
23

24 176. By reason of the foregoing, Defendants have been unjustly enriched
25 and should be required to make restitution to Plaintiff and other
26 California consumers who have been harmed, and/or be enjoined from
27
28

1 continuing in such practices pursuant to Cal. Bus. Code sections 17203
2 and 17204.
3

4 177. As a direct and proximate result of the actions of Defendants, and each
5 of them, stated above, Plaintiff has been injured in that a cloud has been
6 placed upon title to Plaintiff's Property and Defendants have failed to
7 remove this cloud from Plaintiff's title.
8

9 178. Plaintiff is entitled to an order compelling DITECH and any other
10 defendants claiming an interest in and to the Property to take any and all
11 actions necessary to remove the cloud they have placed upon their title
12 and an order enjoining such Defendants from taking such action in the
13 future.
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18 **XIII. SIXTH CAUSE OF ACTION – ACCOUNTING**
19 **[As against DITECH and GREEN TREE]**

20 179. Plaintiff hereby incorporates by reference each and every one of the
21 preceding paragraphs as if the same were fully set forth herein.
22

23 180. DITECH has held itself out to be Plaintiff's creditor and mortgage
24 servicer. As a result of this purported relationship with Plaintiff, said
25
26
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28

1 Defendants have a fiduciary duty to Plaintiff to properly account for
2 payments made by Plaintiff.¹³
3

4 181. As a result of the aforementioned fraudulent conduct, Plaintiff paid
5 DITECH and other agents and employees of DITECH, mortgage
6 payments for a period of many years. However, for the reasons stated
7 herein, none of the money was actually owed to DITECH. For that
8 reason, these moneys are due to be returned to the Plaintiff in full.
9
10

11 182. The exact amount of money due from Defendants to Plaintiff is
12 unknown to Plaintiff and cannot be ascertained without an accounting
13 of the receipts and disbursements of the aforementioned transactions.
14
15
16

17 ¹³ To state of cause of action for accounting, a plaintiff must allege the
18 existence of a fiduciary relationship, or accounts so complicated that an
19 ordinary legal action demanding a fixed sum is impractical. 5 Witkin, Cal.
20 Proc. 4th (1997) Pleading, section 775, p. 233. The elements for a claim for
21 accounting are: 1) fiduciary relationship or other circumstances appropriate to
22 the remedy; and 2) a balance due from the defendant to Plaintiff that can only
23 be ascertained by an accounting. See Witkin, California Procedure, Pleadings,
24 section 776, p 233 (4th ed.).
25
26
27
28

1 Plaintiff is informed, believes, and thereon alleges that the amount due
2 to them exceeds \$75,000.00.
3

4 183. The Plaintiff specifically seek an accounting, and tie the cause of
5 action to the First, Second, Third, Fourth and Fifth cause of action
6 herein, as these causes of action will create a balance due from the
7 Defendant's to the Plaintiff.
8

9
10
11 **XIV. SEVENTH CAUSE OF ACTION – CANCELLATION OF**
12 **INSTRUMENTS**
13 **[As against DITECH; BRECKENRIDGE and GREEN TREE]**

14 184. Plaintiff hereby incorporate by reference each and every one of the
15 preceding paragraphs as if the same were fully set forth herein.
16

17 185. There is in existence certain written instruments which purport to be:

- 18 a. "Deed of Trust" recorded as Document No. 2005-0159780
19 b. "Deed" a/k/a "Deed Upon Foreclosure" recorded as Document
20 No. 2019-0014732
21 c. "Deed of Trust" recorded as Document No. 2019-30756
22 d. On or about January 15, 2019, "Trustee's Deed upon Sale" in
23 favor of Defendant BRECKENRIDGE was recorded with the San
24 Diego County Recorder's Office.
25
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1 186. As set forth in detail above, the Defendant DITECH has and had no
2 right, title, or interest in the relevant Note and Deed of Trust such that it
3 could enjoy any of the benefits provided under said contracts, including
4 declaring a default, or selling the property.
5

6
7 187. The preparation and recording of the referenced documents was
8 performed at the direction and control and at the request of Defendant
9 DITECH.
10

11 188. Since Defendant DITECH has and had no right to undertake the
12 benefits conferred under the Note and Deed of Trust, the execution and
13 recording of the document identified above was without legitimacy,
14 force or effect.
15

16
17 189. If the above documents are not cancelled the Plaintiff faces the loss of
18 title and possession of his property, additional pecuniary damages, and
19 emotional distress.
20

21 190. Defendant DITECH knew at the time it executed or caused to be
22 executed the above document that it was not entitled to execute same,
23 and that it had no legitimate, demonstrable, or actual right title or
24 interest in the relevant Note and Deed of Trust, but executed and
25 recorded the documents nonetheless. Defendant DITECH created,
26
27
28

1 executed, and caused to be recorded the documents with the intent to
2 defraud the Plaintiff.
3

4 191. The Plaintiff therefore requests the Defendant be ordered to deliver the
5 subject documents to the Clerk for cancellation.
6

7
8 **XV. EIGHTH CAUSE OF ACTION - QUIET TITLE**
9 **[As against BRECKENRIDGE and GREEN TREE]**

10 192. Plaintiff hereby incorporates by reference each and every one of the
11 preceding paragraphs as if the same were fully set forth herein.
12

13 193. The Plaintiff claims an interest in the subject property as owner.

14 194. The Defendant BRECKENRIDGE claims to be the owner of the
15 property pursuant to a “trustee’s sale” and issuance of a “trustee’s deed
16 upon sale” by or on behalf of Defendant DITECH either directly or by
17 way of their agents on or about January 10, 2019 .
18

19 195. The claim asserted by BRECKENRIDGE although valid on its face, is
20 invalid and unenforceable because the interest they purport to have
21 acquired was acquired by way of a fraudulent transfer as more fully set
22 forth above, by or on behalf of Defendant DITECH who claimed to
23 have a right to conduct such a sale on January 10, 2019 in spite of
24 having no right to do so.
25
26
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1 196. The acts or actions by Defendant DITECH and their agents, as set
2
3 forth above, were in violation of Federal Law given the true interests in
4 the Note and Deed of Trust belong to the successor of the actual lender,
5 and NOT the Defendant DITECH.
6

7 197. Since Defendants DITECH had no right title or interest to convey to
8 Defendant BRECKENRIDGE, no interest was created in the Plaintiff's
9 property by operation of the purported "trustee's sale" of January 10,
10 2019.
11

12 198. The Plaintiff respectfully requests the Court determine that the
13 Defendant's claims of an interest in the property are void as of January
14 10, 2019 and that Defendant BRECKENRIDGE has no interest
15 whatsoever in the Plaintiff's property created by the "trustee's sale".
16
17
18

19 **XVI. NINTH CAUSE OF ACTION - TO SET ASIDE**
20 **TRUSTEE'S SALE**

21 **[Against DITECH, BRECKENRIDGE and all Doe Defendants]**

22 110. Plaintiff hereby incorporates by reference each and every one of
23 the preceding paragraphs as if the same were fully set forth herein.
24

25 111. The Foreclosing Defendant, DITECH never had the legal
26 authority to foreclose, i.e., the authority to exercise the power of sale as
27 an assignee of the Note and Deed of Trust, because the Foreclosing
28

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1 Defendants' interest was never obtained by the original Lender or a
2 legitimate successor or assigned, and because any claimed interest was
3 never acknowledged and recorded in violation of Civil Code § 2932.5,
4 resulting in the non-judicial foreclosure sale being void ab initio.
5

6
7 112. Moreover, the Foreclosing Defendant, DITECH never had the
8 legal authority to foreclose because the instrument (Deed of Trust),
9 which permitted foreclosure if the borrower was in default, is void as it
10 was never assigned and/or transferred to the Foreclosing Defendants
11 from the original lender. Therefore, the Deed of Trust could not
12 provide a basis for a foreclosure, and the non-judicial foreclosure is
13 void ab initio.
14
15

16
17 113. Accordingly, Plaintiff hereby requests an order of this Court that
18 the Trustee's Sale was irregular in that it was legally void and
19 conducted without any right or privilege by the Foreclosing Defendants.
20
21

22 **WHEREFORE**, Plaintiff prays as follows:
23

24 199. For compensatory, special and general damages in an amount
25 according to proof at trial, but not less than \$650,000, against
26 Defendants DITECH, Green Tree inclusive; For reimbursement of
27
28

1 checks from Ditech totaling \$15,400 that are not negotiable because of
2 the closure of accounts by Ditech and;
3

4 200. For punitive and exemplary damages in an amount to be determined
5 by the Court against all Defendants DITECH and Green Tree inclusive;
6

7 201. For an order compelling Defendants DITECH, BRECKENRIDGE and
8 Green Tree inclusive to remove any instrument which does not or could
9 be construed as constituting a cloud upon Plaintiff's title to the
10 Property, including any purported Assignment of Deed of Trust, and
11 other document filed with the County Recorder relative to the subject
12 property;
13
14

15 202. For an order finding that Defendants DITECH, BRECKENRIDGE and
16 Green Tree inclusive have no legally cognizable rights as to Plaintiff,
17 the Property, Plaintiff's Promissory Note, Plaintiff's Deed of trust or
18 any other matter based on contract or any of the documents prepared by
19 Defendants DITECH and Green Tree inclusive, tendered to and
20 executed by Plaintiff;
21
22
23

24 203. For the Court to issue an order restraining Defendants DITECH,
25 BRECKENRIDGE and Green Tree inclusive, their agents, or
26 employees from continuing or initiating any action against the Property
27
28

1 and enjoining Defendants, their agents or employees from doing so
2 during the pendency of this matter;
3

4 204. For an order compelling Defendants DITECH and Green Tree
5 inclusive to disgorge all amounts wrongfully taken by them from
6 Plaintiff and returning same to Plaintiff's interest thereon at the
7 statutory rate from the date the funds were first received from Plaintiff;
8

9 205. For a Declaration of Rights and Obligations as between the Plaintiff
10 and all Defendants with respect to the Note, Mortgage and Deed of
11 Trust and the subject property that is the subject of this complaint;
12

13 206. For an order setting aside the "Trustee's Sale" undertaken herein by
14 the Defendant DITECH.
15

16 207. For costs of suit incurred herein;
17

18 208. For reasonable attorney fees incurred, and
19

20 209. For such other and further relief as the Court may deem proper.
21

22 Date: May 13, 2019

23 /s/ JOSEPH LA COSTA
24

25 Joseph C La Costa

26 Attorney for Plaintiff,

27 Michael McChristian
28

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7
8 **CERTIFICATION**
9

10 By signature below, counsel certifies that the foregoing document was
11 prepared in TIME NEW ROMAN, 14-point font, in compliance with Local
12 Rules regarding FONT Size.
13

14
15 Date: May 13, 2019
16

17 /s/ JOSEPH LA COSTA
18

19 _____
20 Joseph La Costa
21 Attorney for Plaintiff and Creditor,
22 Michael McChristian
23
24
25
26
27
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